FEDERAL CONSTRUCTION CO. (PG) SDN. BHD. v. FARIDAH BINTI SHAIFUL YAZAN

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.JJ.) May 11, 1977]
[Alor Star — Federal Court Civil Appeal No. 173 of 1975]

Landlord and Tenant — Termination of tenancy by notice to quit — Allegation of oral agreement for sale of land unsupported by consideration — Defence struck out.

The appellants had let out the premises to the respondent and it was a term of the tenancy agreement that they could discontinue the tenancy thereby created by serving on the respondent a full month's notice requiring her to quit. The appellants gave the respondent notice to quit but the respondent failed to comply with the notice. The appellants thereupon took proceedings for possession. In her defence the respondent alleged that there had been an oral agreement to sell the premises to her. The learned Magistrate ordered that the defence be struck out and he gave judgment against the respondent. On appeal, it was held in the High Court that there was a valid defence raised, and that the respondent was entitled to defend the action. The appellants appealed to the Federal Court.

Held, allowing the appeal: (1) the learned Magistrate was right in striking out the defence. It was clear that the respondent was let into possession of the premises under the tenancy agreement so that her right to remain on the premises, if any, flowed entirely from the agreement;

(2) the respondent could not rely on the oral agreement, as she was not let into possession under that oral agreement nor was the oral agreement supported by any consideration.

FEDERAL COURT.

A. Jayadeva (*Choe Kuan Hin* with him) for the appellant.

Karpal Singh for the respondent.

Gill C.J. (Malaya) (delivering the judgment of the Court): This appeal arose out of an action in the Magistrate's Court at Alor Star in which the appellants as plaintiffs claimed against the respondent as defendant vacant possession of the premises at 1407-A Lorong Bandahara Alor Star, arrears of rent and mesne profits.

The plaintiffs' case as set out in their statement of claim was as follows. By a tenancy agreement dated October 1, 1972 they let the premises to the defendant as from that date for a term of one year at a monthly rental of $190. It was a term of the tenancy agreement that they could discontinue the tenancy thereby created by serving on the defendant a full month's notice requiring her to quit. On August 23, 1973 they gave the defendant one month's notice effective from September 1, 1973 terminating the tenancy and requiring her to vacate the premises on or before October 1, 1973. The defendant failed to comply with the said notice.

In her statement of defence the defendant said that she refused to comply with the notice to quit because some time in August 1970 one Mr. Leong, the manager of the plaintiff company, had agreed to sell the said premises to her or her nominee for a consideration of $27,000 at any time that she wished, that despite her various requests the said Mr. Leong as agent and/or servant of the plaintiff company had failed and/or refused so to do, and that she intended to commence proceedings in the High Court for specific performance of the said agreement.

In due course the plaintiffs made an application to the court that the defendant's defence be struck out and that there be judgment against the defendant in terms of their claim. This application was granted and judgment entered against the defendant accordingly. In his grounds of judgment the learned Magistrate said that where the defendant admitted the existence and the validity of the tenancy agreement and the notice to quit it was not open to her to argue that she was justified in refusing to comply with the notice because of any equitable interest which she might claim in the property by virtue of any alleged sale agreement, and that until the court decreed specific performance of any such agreement she was bound to honour the tenancy agreement.

The defendant appealed. Her appeal was allowed by Syed Agil Barakbah J. on the ground that the learned Magistrate ought to have considered, at the stage when the application to strike out the defence was made, whether a triable issue had been raised in the statement of defence and whether the defendant was entitled to defend the action. He further took the view that the statement of defence had alleged the existence of a separate oral agreement which was not inconsistent with the terms of the written tenancy agreement.

In our judgment the learned Magistrate was right in striking out the defence. It is clear that the defendant was let into possession of the premises under the tenancy agreement so that her right to remain on the premises, if any, flowed entirely from that agreement. Quite clearly she was not let into possession of the premises by virtue of the alleged oral agreement under which she claimed that the plaintiffs had agreed to sell her the premises. We may add that in our view the defendant could not rely upon the oral agreement which was clearly not supported by any consideration.

We therefore allowed the appeal, set aside the order of the learned judge and restored the order made by the learned Magistrate. We made a further order that the defendant do deliver up vacant possession on or before April 30, 1977.

Appeal allowed.

Solicitors: *Choe & Co.; Karpal Singh & Co.*

TAN THEAN CHOO v. CHEAH KAH SEONG & ANOR.

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.JJ.) May 11, 1977]
[Alor Star — Federal Court Civil Appeal No. 49 of 1976]

Land Law — Caveat — Caveator claiming interest in portion of land — Whether entitled to caveat the whole land.

The appellant had bought a 2/11 undivided share in a piece of land in Perlis and had paid part of the purchase price. Subsequently it appeared that the vendor transferred the 2/11 share without consideration to his nephews, (respondents) who were aware of the agreement of sale with the appellant. The appellant lodged a caveat against the land and also started proceedings against the vendor and the respondents. The respondents applied to remove the caveat and the